

PAID

TOWN OF CARY  
Planning Department

FEB 02 2017

Submit to the Planning Department, P.O. Box 8005, Cary, NC 27512

17-REZ-10

For office use only:

Payment Method: CASH ☐ CHECK ☒ CREDIT CARD ☐ Amount: \$1900 P&Z HTE# 17-0817

#202

## APPLICATION FOR: (check all that apply)

Town of Cary

☐ LAND USE PLAN AMENDMENT (Complete Parts 1, 2 and 4)

JAN 26 2017

☒ REZONING (Complete Parts 1, 2 and 3)

Development Services

Associated Annexation Petition ☐ Yes ☒ NoTraffic Impact Study Required ☐ Yes ☒ No

TAR Number: \_\_\_\_\_ Date: 1/27/17

See enclosed Will for current ownership information.  
This application is deemed sufficiently complete for purposes of submittal.Planning Staff Signature: Debra Thanner Date: 2/2/2017

Submittal deadlines incorporate sufficiency review of rezoning/land use plan amendment applications. Signature by Planning Staff is required prior to payment of fees and final acceptance of application.

STAFF USE ONLY: Circle applicable Parts: ① ② 3A/B1 3B2 3B3 3C1 3C2 3C3 3C4 3D 3E1a 3E1b 3E2 3F 4A 4B

Check all that apply: Fees will not be accepted until the application is deemed sufficiently complete and signed by Planning Staff.

## REZONING FEE:

☐ \$1,400.00 – General rezoning, or initial zoning associated with owner-initiated annexation petition, 5 acres or greater☐ \$300.00 – Initial zoning associated with citizen-initiated annexation petition, less than 5 acres☒ \$1,900.00 – Conditional use rezoning (per change of zoning classification requested)☐ \$2,500.00 – Mixed Use District Rezoning (New MXD, or major amendment to existing PDP)☐ \$500.00 – Mixed Use District Rezoning (Minor amendment to existing PDP - typically less than 50% of floor area, number of units, etc.)☐ \$2,500.00 – New application or major amendments to approved Major PDD☐ \$1,250.00 – Minor PDD

NOTE: An additional fee of \$150 will be charged for each additional public hearing or neighborhood meeting required due to changes in the request made during the rezoning process.

## LAND USE PLAN AMENDMENT FEE:

☐ \$2,000.00 – Land Use Plan Amendment, or land use element of an area plan

Project Name		Carpenter Upchurch Towns
Name of PDD (if applicable)		N/A
Location	Address	3010 Carpenter Upchurch Road, Cary, NC
	General Location	nr. the intersection of Morrisville Carpenter Rd. and Carpenter Upchurch Rd.
	Jurisdiction (check one)	<input checked="" type="checkbox"/> Cary Corporate Limits <input type="checkbox"/> Cary ETJ <input type="checkbox"/> Wake Co.* <input type="checkbox"/> Chatham Co.* * Submittal of an annexation petition is required if rezoning is requested

**Part 1: Applicant Information**

Applicant		Applicant's Contact	
Name	<u>Mark Ward</u>	Name	<u>Don Curry</u>
Firm	<u>Shenandoah Homes</u>	Firm	<u>Curry Engineering</u>
Address	<u>2840 Plaza Pl., Suite 200</u>	Address	<u>205 S. Fuquay Ave.</u>
City, State, Zip	<u>Raleigh, NC 27612</u>	City, State, Zip	<u>Fuquay-Varina, NC 27526</u>
Phone (area code)	<u>984-200-5540</u>	Phone (area code)	<u>919-552-0849</u>
Email	<u>mark@shenandoahhomes.us</u>	Email	<u>don@curryeng.com</u>

**Part 2: Parcel & Owner Information**

<b>Property Owner(s)</b> <i>Provide property owner name and address as it appears in the Wake or Chatham County Tax Records.</i>	<b>County Parcel Number(s) (10 digit)</b>	<b>Real Estate ID(s)</b>	<b>Deeded Calculated Acres <sup>1</sup></b>
Margaret Woodlief 304 Trappers Sack Rd Cary NC 27513	0735 82 1924 ✓	0011745 ✓	5.46 ✓
Melanie C Murray 417 Santa Gertrudis Dr. Clayton NC 27520			
Katherine C Watson 103 Misty Ln. Goldsboro NC 27530			
<b>Total Acres</b>	<b>5.46</b>		

<sup>1</sup> A property survey showing zoning district boundaries and acreages is required if multiple zoning districts are proposed or if the proposed rezoning applies to only a portion of a parcel.

## Part 3A: Rezoning Request

Pre-Application Meeting: ☒ yes Date: 8/3/16 ☐ no

Existing Zoning	Base Zoning District(s)	ORD-CU
	Zoning Overlay District(s) <i>Check any that apply</i>	<input type="checkbox"/> Mixed Use Overlay District (Name: _____) <input type="checkbox"/> Conservation Residential Overlay District <input type="checkbox"/> Thoroughfare Overlay District <input type="checkbox"/> Airport Overlay District <input type="checkbox"/> Watershed Protection Overlay District <input type="checkbox"/> Jordan Lake <input type="checkbox"/> Jordan Lake Critical Area <input type="checkbox"/> Swift Creek <input type="checkbox"/> Historic Preservation Overlay District
	Zoning Conditions <i>(if any)</i>	N/A
Proposed Zoning	Proposed Base Zoning District(s)	RMF-CU Residential Multifamily Conditional use
	Proposed Zoning Conditions	<input type="checkbox"/> No zoning conditions are proposed <input checked="" type="checkbox"/> Zoning conditions are proposed and included in attached affidavit
	Proposed Changes to Overlay Districts	N/A
	Summary of Proposed Development or Purpose of Request	Proposed townhome development
Applicable Area Plan <i>(if any)</i>		<input type="checkbox"/> Town Center Area Plan <input type="checkbox"/> Southeast Area Plan <input type="checkbox"/> Southwest Area Plan <input type="checkbox"/> Northwest Area Plan <input type="checkbox"/> Chatham/Cary Joint Land Use Plan <input type="checkbox"/> Carpenter Community Plan <input type="checkbox"/> Alston Activity Center Concept Plan <input checked="" type="checkbox"/> Other Carpenter Community Plan _____ <input type="checkbox"/> None applicable to site
Land Use Plan		Existing Plan Designation: Medium-Density Residential
		Associated Land Use Plan Amendment Submitted <input type="checkbox"/> yes <input checked="" type="checkbox"/> no   N/A

## Part 3B: Applicant's Rezoning Justification Statement(s)

### Rezoning Justification Statement #1 *Required for all rezoning requests*

Describe how the proposed rezoning meets the criteria listed below.

Section 3.4.1(E) of the Land Development Ordinance states that Council should consider the following criteria when reviewing all proposed rezonings:

- (1) The proposed rezoning corrects an error or meets the challenge of some changing condition, trend, or fact;

*Applicant's Comments: This proposed rezoning meets the need for additional townhome housing in the growing west Cary area.*

- (2) The proposed rezoning is consistent with the Comprehensive Plan and the purposes set forth in Section 1.3 of this Ordinance;

*Applicant's Comments: The property does not alter or negatively impact the Town's Comp. Plan. The eventual development will pay particular to the character of the Historic Carpenter Planning Area with extra arch. consideration given to the rural crossroads feel of this region, craftsman style homes, and clustered development with considerable open space layout.*

- (3) The Town and other service providers will be able to provide sufficient public safety, educational, recreational, transportation, and utility facilities and services to the subject property, while maintaining sufficient levels of service to existing development;

*Applicant's Comments: Existing utilities are nearby and easily extended to this development. Roadway improvements on April Bloom Ln. and Carpenter Upchurch Rd. easily serve the needs of this proposed property.*

- (4) The proposed rezoning is unlikely to have significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation;

*Applicant's Comments: The proposed rezoning will not adversely impact the natural environment. Stormwater management will meet the Town's requirements and consideration will be given to provide ample open space within the development itself.*

- (5) The proposed rezoning will not have significant adverse impacts on other property in the vicinity of the subject tract; and

*Applicant's Comments: The proposed rezoning will not adversely impact adjacent property or the subject parcel.*

- (6) The proposed zoning classification is suitable for the subject property.

*Applicant's Comments: The proposed zoning classification is consistent with the Town's plans for this region and compatible with surrounding uses.*

**Part 3C : Owner's Signature(s)** Completion of the applicable sub-section(s) is required for all rezoning requests except requests to rezone to a General Use District

Check applicable sub-section(s)

- ☒ 3C(1) – Required where property owner is an Individual
- ☐ 3C(2) – Required where property owner is a Limited Liability Company (LLC)
- ☐ 3C(3) – Required where property owner is General Partnership (GP),  
Limited Partnership (LP) or Limited Liability Partnership (LLP)
- ☐ 3C(4) – Required where property owner is a Corporation

(Attach additional sheets if necessary)

**Part 3C(1): Individual** All owners must sign, including husband & wife, and all joint tenants.  
(Notary not required)

Property Owner Printed Name Margaret C. Woodlief  
Property Owner Signature Margaret C. Woodlief Date 1-23-17

Property Owner Printed Name Kathryn C Watson  
Property Owner Signature Kathy C. Watson Date 1-23-17

Property Owner Printed Name Melanie C Murray  
Property Owner Signature Melanie C Murray Date 1-23-17

Property Owner Printed Name \_\_\_\_\_  
Property Owner Signature \_\_\_\_\_ Date \_\_\_\_\_

Property Owner Printed Name \_\_\_\_\_  
Property Owner Signature \_\_\_\_\_ Date \_\_\_\_\_

Property Owner Printed Name \_\_\_\_\_  
Property Owner Signature \_\_\_\_\_ Date \_\_\_\_\_

Property Owner Printed Name \_\_\_\_\_  
Property Owner Signature \_\_\_\_\_ Date \_\_\_\_\_

**Part 3D: Authorized Agent Authorization** (must be notarized, and signed by property owner(s) identified in Part 3C. Attach additional sheets if necessary)

*Required if the owner(s) of property proposed to be rezoned to a Conditional Use, Planned Development, or Mixed Use Zoning District wish to authorize another individual or entity to represent them through the public hearing process, and make binding statements and commitments regarding the request.*

One of the following must be included as an attachment to this application:

- ☐ Power of Attorney stating that the agent is authorized to represent and bind the property on behalf of the property owner.
- OR**
- ☐ If the agent is the contract purchaser of the property, a redacted copy of a fully executed sales contract containing a clause or clauses allowing an application to be filed.

I/We, (below), the fee simple owner(s) of the following described property:

Property Owner Name(s)

0735 82 1924

PIN, Real ID Number or Legal Description

hereby petition the Town of Cary to amend the Zoning Map to: (check all that apply)

- ☒ Change the zoning district(s) from ORD-CU to RMF-CU
- ☐ Amend zoning conditions applicable to an existing conditional use district
- ☐ Amend the PDD document and/or Master Plan for the \_\_\_\_\_ Planned Development District
- ☐ Amend the Preliminary Development Plan for the \_\_\_\_\_ Mixed Use District

and affirm that Mark Ward is hereby designated to act as my/our agent

Authorized Agent

and to file the attached application for the stated amendment(s) and make binding statements and commitments regarding the amendment request(s).

I certify that I have examined the application and that all statements and diagrams submitted are true and accurate to the best of my knowledge. Further, I understand that this application, attachments and fees become part of the Official Records of the Town of Cary, North Carolina and are not returnable.

Margaret C. Woodlief  
Kathy C. Watson  
Owners' Signature

1/23/17  
Date

Johnston COUNTY, NORTH CAROLINA

SWORN TO AND SUBSCRIBED before me this 23rd day of January, 20 17



Sarah E. Ward  
Signature of Notary Public

My Commission Expires: April 18, 2017

### **Part 3E: Affidavit Signed by Property Owner or Authorized Agent**

*Completion of the applicable sub-section(s) is required for all rezoning requests except requests to rezone to a General Use District. Must be notarized*

Check applicable sub-section(s)

- ☐ **3E(1a)** – Required where the property owner maintains sole authority to make binding statements and commitments regarding the request, and the property owner is one or more individuals.

and/or

- ☐ **3E(1b)** – Required where the property owner maintains sole authority to make binding statements and commitments regarding the request, and the property owner is a corporate or similar entity.

**OR**

- ☒ **3E(2)** – Required where the property owner has authorized another individual or entity to represent him/her through the public hearing process and make binding statements and commitments regarding the request. *(Selection of this option requires submittal of Power of Attorney or redacted sales contract per Part 3D above)*

### **NOTE:**

**Each time proposed zoning conditions are revised after the initial submittal, a new affidavit must be provided to the case planner.**

**Part E(2) Affidavit of Authorized Agent**

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

AFFIDAVIT OF  
Mark Ward  
(Agent)

I, Mark Ward, being first duly sworn, hereby depose and say:

1. I am over eighteen years of age and competent to make this Affidavit. All statements made herein are based upon my personal knowledge.

2. Woodlief, Watson, Murray ("the Applicant") is/are the owner(s) of certain real property located at 1030 Carpenter Upchurch Rd Cary NC, and identified as 0735 82 1924 ("the Property").

3. On or about 1/26/17 [insert date], the Applicant submitted to the Town of Cary an Application for a rezoning of the Property ("the Application").

4. Together with the Application, the Applicant submitted a fully executed power of attorney, or a fully executed sales contract, which remains in full force and effect, which grants me the authority to represent and bind the Applicant and execute this Affidavit.

5. I have discussed the following zoning conditions or provisions with the Applicant, and the Applicant has agreed to volunteer the following zoning conditions or provisions in support of the Rezoning:

*Use shall be limited to townhomes and density shall be limited to a maximum of eight (8) dwelling units per acre.*

6. In addition to the zoning conditions or provisions listed above in paragraph 5, the Applicant, through counsel or otherwise, may offer or consent to at any hearing before the Town of Cary Planning and Zoning Board or Town Council certain additional conditions of approval (which additional conditions of approval, along with the zoning conditions or provisions listed in paragraph 5, are collectively referred to hereinafter as the "Conditions of Approval").

7. All Conditions of Approval that the Applicant offers in connection with the Rezoning are offered to address the conformance of the development and use of the site to Town ordinances and officially adopted comprehensive plan or other plan and to address the impacts reasonably expected to be generated by the development or use of the site.

8. I intend for the Town to rely on this Affidavit and in offering the Conditions of Approval, I hereby swear that:

- a. all zoning conditions and provisions are freely offered as proposed zoning laws, based solely on the property owner/applicant's independent judgment; and
- b. the property owner/applicant is not relying upon any statement by the Town staff or any member of the Town Council in connection with the decision to offer any zoning conditions or provisions; and
- c. the property owner/applicant understands that other parties that have standing in the rezoning proceeding are relying on the validity of the zoning conditions and provisions; and
- d. the property owner/applicant intends for all future owners of the property to be bound by the zoning conditions and provisions should the Town Council adopt them as part of the rezoning; and
- e. the property owner/applicant will take all appropriate measures to ensure that future property owners are aware of the zoning conditions and provisions.

Further the Affiant sayeth not.

This the 2<sup>nd</sup> day of February, 2017.

Name: Mark Ward  
Title:

Sworn and subscribed before me this the 2 day of February, 2017

Chianne Capel  
Notary Public

My commission expires: 4/7/21





# AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between

Shenandoah Homes LLC or Assigns

a(n) Limited Liability Company ("Buyer"), and  
(individual or State of formation and type of entity)

Kathryn C. Watson, Margaret C Woodlief, Melanie C. Murray

a(n) Individuals ("Seller").  
(individual or State of formation and type of entity)

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

**Section 1. Terms and Definitions:** The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) **"Property":** (Address) 3010 Carpenter Upchurch Road, Cary, NC 27519

Plat Reference: Lot(s) \_\_\_\_\_, Block or Section \_\_\_\_\_, as shown on Plat Book or Slide \_\_\_\_\_ at Page(s) \_\_\_\_\_, \_\_\_\_\_ County, consisting of \_\_\_\_\_ acres.

☐ If this box is checked, "Property" shall mean that property described on **Exhibit A** attached hereto and incorporated herewith by reference.

(For information purposes: (i) the tax parcel number of the Property is: 0735821924; and, (ii) some or all of the Property, consisting of approximately 5.46 acres, is described in Deed Book 03409, Page No. 0682, Wake County.)

together with all buildings and improvements thereon and all fixtures and appurtenances thereto and all personal property, if any, itemized on **Exhibit A**.

\$ \_\_\_\_\_ (b) **"Purchase Price"** shall mean the sum of \_\_\_\_\_ Dollars,  
*payable on the following terms:*

\$ \_\_\_\_\_ (i) **"Earnest Money"** shall mean \_\_\_\_\_ Dollars  
or terms as follows: \_\_\_\_\_

Upon this Agreement becoming a contract in accordance with Section 14, the Earnest Money shall be promptly deposited in escrow with Tryon Title (name of person/entity with whom deposited), to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein.

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This form jointly approved by:  
North Carolina Bar Association  
North Carolina Association of REALTORS®, Inc.  
Buyer Initials KS Seller Initials \_\_\_\_\_

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☒ ANY EARNEST MONEY DEPOSITED BY BUYER IN A TRUST ACCOUNT MAY BE PLACED IN AN INTEREST BEARING TRUST ACCOUNT, AND: (check only ONE box)

☐ ANY INTEREST EARNED THEREON SHALL BE APPLIED AS PART PAYMENT OF THE PURCHASE PRICE OF THE PROPERTY AT CLOSING, OR DISBURSED AS AGREED UPON UNDER THE PROVISIONS OF SECTION 10 HEREIN. (Buyer's Taxpayer Identification Number is: \_\_\_\_\_ )

☒ ANY INTEREST EARNED THEREON SHALL BELONG TO THE ACCOUNT HOLDER IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

\_\_\_\_\_ (ii) **Proceeds of a new loan** in the amount of \_\_\_\_\_ Dollars for a term of \_\_\_\_\_ years, with an amortization period not to exceed \_\_\_\_\_ years, at an interest rate not to exceed \_\_\_\_\_ % per annum with mortgage loan discount points not to exceed \_\_\_\_\_ % of the loan amount, or such other terms as may be set forth on **Exhibit B**. Buyer shall pay all costs associated with any such loan.

\$ \_\_\_\_\_ (iii) **Delivery of a promissory note** secured by a deed of trust, said promissory note in the amount of \_\_\_\_\_ Dollars being payable over a term of \_\_\_\_\_ years, with an amortization period of \_\_\_\_\_ years, payable in monthly installments of principal, together with accrued interest on the outstanding principal balance at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum in the amount of \$ \_\_\_\_\_, with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on **Exhibit B**. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. (NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust given hereunder is subordinated to senior financing, the material terms of such financing must be set forth on Exhibit B. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)

\_\_\_\_\_ (iv) **Assumption** of that unpaid obligation of Seller secured by a deed of trust on the Property, such obligation having an outstanding principal balance of \$ \_\_\_\_\_ and evidenced by a note bearing interest at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum, and a current payment amount of \$ \_\_\_\_\_. The obligations of Buyer under this Agreement are conditioned upon Buyer being able to assume the existing loan described above. If such assumption requires the lender's approval, Buyer agrees to use its best efforts to secure such approval and to advise Seller immediately upon receipt of the lender's decision. Approval must be granted on or before \_\_\_\_\_. On or before this date, Buyer has the right to terminate this Agreement for failure to be able to assume the loan described above by delivering to Seller written notice of termination by the above date, *time being of the essence*. If Buyer delivers such notice, this Agreement shall be null and void and Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived the loan condition. Unless provided otherwise in Section 3 hereof, Buyer shall pay all fees and costs associated with any such assumption, including any assumption fee charged by the lender. At or before Closing, Seller shall assign to Buyer all interest of Seller in any current reserves or escrows held by the lender, any property management company and/or Seller, including but not limited to any tenant improvement reserves, leasing commission reserves, security deposits and operating or capital reserves for which Seller shall be credited said amounts at Closing.

\$ \_\_\_\_\_ (v) **Cash, balance of Purchase Price**, at Closing in the amount of \_\_\_\_\_ Dollars.

Buyer Initials DS \_\_\_\_\_ Seller Initials \_\_\_\_\_

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- (c) **"Closing"** shall mean the date and time of recording of the deed. Closing shall occur on or before \_\_\_\_\_ or **August 31, 2017**
- (d) **"Contract Date"** means the date this Agreement has been fully executed by both Buyer and Seller.
- (e) **"Examination Period"** shall mean the period beginning on the first day after the Contract Date and extending through through 11:59pm (based upon time at the locale of the Property) on \_\_\_\_\_  
**December 15, 2016**

**TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.**

- (f) **"Broker(s)"** shall mean: \_\_\_\_\_ **NAI Carolantic Realty, Inc.** ("Listing Agency"),  
\_\_\_\_\_ **Andrew Moss Withers** ("Listing Agent" - License # **262680**)  
Acting as: ☒ Seller's Agent; ☐ Dual Agent  
and \_\_\_\_\_ ("Selling Agency"),  
\_\_\_\_\_ ("Selling Agent" - License # \_\_\_\_\_)  
Acting as: ☐ Buyer's Agent; ☐ Seller's (Sub) Agent; ☐ Dual Agent

- (g) **"Seller's Notice Address"** shall be as follows:  
**304 Trappers Sack Road, Cary, NC 27513**  
except as same may be changed pursuant to Section 12.

- (h) **"Buyer's Notice Address"** shall be as follows:  
**2840 Plaza Place #200, Raleigh, NC 27612**  
except as same may be changed pursuant to Section 12.

- ✓ (i) If this block is marked, additional terms of this Agreement are set forth on **Exhibit B** attached hereto and incorporated herein by reference. (Note: Under North Carolina law, real estate agents are not permitted to draft conditions or contingencies to this Agreement.)

**Section 2. Sale of Property and Payment of Purchase Price:** Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

**Section 3. Proration of Expenses and Payment of Costs:** Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities as detailed on attached **Exhibit B**, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), any deferred or rollback taxes, and other conveyance fees or taxes required by law, and the following:

Buyer Initials DS \_\_\_\_\_ Seller Initials \_\_\_\_\_

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3010 Carpenter

Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement and the following:

Each party shall pay its own attorney's fees.

**Section 4. Deliveries:** Seller agrees to use best efforts to deliver to Buyer as soon as reasonably possible after the Contract Date copies of all information relating to the Property in possession of or available to Seller, including but not limited to: title insurance policies (and copies of any documents referenced therein), surveys, soil test reports, environmental surveys or reports, site plans, civil drawings, building plans, maintenance records and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, and shall deliver to Seller, upon the release of the Earnest Money, copies of all of the foregoing without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof.

**Section 5. Evidence of Title:** Seller agrees to convey fee simple marketable and insurable title to the Property without exception for mechanics' liens, free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (if applicable) and (c) matters of record existing at the Contract Date that are not objected to by Buyer prior to the end of the Examination Period ("Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property (or any personal property listed on **Exhibit A**) after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

**Section 6. Conditions:** This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **New Loan:** The Buyer must be able to obtain the loan, if any, referenced in Section 1(b)(ii). Buyer must be able to obtain a firm commitment for this loan on or before \_\_\_\_\_, effective through the date of Closing. Buyer agrees to use its best efforts to secure such commitment and to advise Seller immediately upon receipt of lender's decision. On or before the above date, Buyer has the right to terminate this Agreement for failure to obtain the loan referenced in Section 1(b)(ii) by delivering to Seller written notice of termination by the above date, *time being of the essence*. If Buyer delivers such notice, this Agreement shall be null and void and Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived the loan condition. Notwithstanding the foregoing, after the above date, Seller may request in writing from Buyer a copy of the commitment letter. If Buyer fails to provide Seller a copy of the commitment letter within five (5) days of receipt of Seller's request, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received a copy of the commitment letter, and Buyer shall receive a return of Earnest Money.

(b) **Qualification for Financing:** If Buyer is to assume any indebtedness in connection with payment of the Purchase Price, Buyer agrees to use its best efforts to qualify for the assumption. Should Buyer fail to qualify, Buyer shall notify Seller in writing immediately upon lender's decision, whereupon this Agreement shall terminate, and Buyer shall receive a return of Earnest Money.

(c) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple marketable and insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(d) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

Buyer Initials <sup>DS</sup>  
DS \_\_\_\_\_ Seller Initials \_\_\_\_\_

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(e) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil boring and other testing, conducting timber cruises, and surveying the Property. Buyer shall conduct all such on-site inspections, examinations, soil boring and other testing, timber cruises and surveying of the Property in a good and workmanlike manner, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours any tenant's business is open to the public and shall give prior notice to any tenants of any entry onto any tenant's portion of the Property for the purpose of conducting inspections. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant herein) unless required by law and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Section 6(e) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Buyer shall, at Buyer's expense, promptly repair any damage to the Property caused by Buyer's entry and on-site inspections. Except as provided in Section 6(c) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

**Section 7. Leases (Check one of the following, as applicable):**

☒ If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

☐ If this box is checked, Seller discloses that there are one or more leases affecting the Property (oral or written, recorded or not - "Leases") and the following provisions are hereby made a part of this Agreement.

(a) A list of all Leases shall be set forth on **Exhibit B**;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

(c) Seller represents and warrants that as of the Contract Date there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 4. Seller agrees not to commit a Lease Default as Landlord after the Contract Date, and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) In addition to the conditions provided in Section 6 of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease), and Seller agrees to use its best efforts to effect such assignment. Any assignment required under this Section 7 shall be required to be delivered at or before Closing by Seller in addition to those deliveries required under Section 11 of this Agreement.

(e) Seller agrees to deliver an assignment of any Lease at or before Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at or before Closing. Seller also agrees to execute and deliver (and work diligently to obtain any tenant signatures necessary for same) any estoppel certificates and subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

**Section 8. Environmental:** Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the

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Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

**Section 9. Risk of Loss/Damage/Repair:** Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

**Section 10. Earnest Money Disbursement:** In the event that any of the conditions hereto are not satisfied, or in the event of a breach of this Agreement by Seller, then the Earnest Money shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach. In the event this offer is accepted and Buyer breaches this Agreement, then the Earnest Money shall be forfeited, but such forfeiture shall not affect any other remedies available to Seller for such breach. NOTE: In the event of a dispute between Seller and Buyer over the return or forfeiture of Earnest Money held in escrow by a licensed real estate broker, the broker is required by state law to retain said Earnest Money in its trust or escrow account until it has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction, or alternatively, the party holding the Earnest Money may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

**Section 11. Closing:** At or before Closing, Seller shall deliver to Buyer a general warranty deed unless otherwise specified on Exhibit B and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, a bill of sale for any personalty listed on Exhibit A, an owner's affidavit, lien waiver forms (and such other lien related documentation as shall permit the Property to be conveyed free and clear of any claim for mechanics' liens) and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall pay to Seller the Purchase Price. At Closing, the Earnest Money shall be applied as part of the Purchase Price. The Closing shall be conducted by Buyer's attorney or handled in such other manner as the parties hereto may mutually agree in writing. Possession shall be delivered at Closing, unless otherwise agreed herein. The Purchase Price and other funds to be disbursed pursuant to this Agreement shall not be disbursed until Closing has taken place.

**Section 12. Notices:** Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date delivered in person or deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith.

**Section 13. Entire Agreement:** This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included.

**Section 14. Enforceability:** This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that the notice described in Section 12 is not required for effective communication for the purposes of this Section 14. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

**Section 15. Adverse Information and Compliance with Laws:**

(a) **Seller Knowledge:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows (Insert "None" or the identification of any matters relating to (i) through (iv) above, if any):

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**Note:** For purposes of this Agreement, a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether or not it is fully payable at time of closing. A "pending" special assessment is defined as an assessment that is under formal consideration by a governing body. Seller shall pay all owners' association assessments and all governmental assessments confirmed as of the date of Closing, if any, and Buyer shall take title subject to all pending assessments disclosed by Seller herein, if any.

Seller represents that the regular owners' association dues, if any, are \$ \_\_\_\_\_ per \_\_\_\_\_.

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

**Section 16. Survival of Representations and Warranties:** All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

**Section 17. Applicable Law:** This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

**Section 18. Assignment:** This Agreement is freely assignable unless otherwise expressly provided on Exhibit B.

**Section 19. Tax-Deferred Exchange:** In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

**Section 20. Memorandum of Contract:** Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

**Section 21. Authority:** Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

**Section 22. Brokers:** Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Buyer and/or the Seller.

**Section 23. Attorneys Fees:** If legal proceedings are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding.

☐ **EIFS/SYNTHETIC STUCCO:** If the adjacent box is checked, Seller discloses that the Property has been clad previously (either in whole or in part) with an "exterior insulating and finishing system" commonly known as "EIFS" or "synthetic stucco". Seller makes no representations or warranties regarding such system and Buyer is advised to make its own independent determinations with respect to conditions related to or occasioned by the existence of such materials at the Property.

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THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

**BUYER:**

**Individual**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Business Entity**

Shenandoah Homes LLC or Assigns

By: David Stallings  
DocuSigned by: (Name of Entity)

Name: David Stallings  
CFE9E3E473A9451

Title: President

Date: 9/22/2016

**SELLER:**

**Individual**

Kathryn E. Watson  
Kathryn E. Watson  
Kathryn E. Watson

Date: 9-27-2016  
Rickey Stevens Woodlief 9/27/2016

Margaret C. Woodlief  
Margaret C. Woodlief

Date: 9-27-2016

Tony L. Murray 9/27/16  
Melanie C. Murray 9/27/2016  
Business Entity

\_\_\_\_\_  
(Name of Entity)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.

Tryon Title  
(Name of Firm)

Date: \_\_\_\_\_

By: \_\_\_\_\_

Additional Signature Page to that Agreement for Purchase and Sale of Real Estate  
by and between Kathryn C. Watson, Margaret C. Woodlief and Melanie C. Murray as  
Sellers, and Shenandoah Homes, LLC, as Buyer.

Sellers:

*Kathryn Carpenter Watson* Date: 9-27-2016  
Kathryn Carpenter Watson

*Guilford Laws Watson III*  
*Kathryn Carpenter Watson POA* Date: 9-27-2016  
Guilford Laws Watson III

*Melanie Carpenter Murray* Date: 9-27-2016  
Melanie Carpenter Murray

*Tony Lynn Murray* Date: 9/27/16  
Tony Lynn Murray

*Margaret Carpenter Woodlief* Date: 9-27-2016  
Margaret Carpenter Woodlief

*Rickey Stevens Woodlief* Date: 9/27/2016  
Rickey Stevens Woodlief

Date:

Executor of the Estate of Seller